

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

MOUNTAIN TOP BEVERAGE GROUP, : CASE NO. C-1-01-832
INC.,

: Plaintiff, : District Judge Susan J. Dlott

v.

: WILDLIFE BREWING N.B., INC., et al., : **MOTION TO CERTIFY COURT'S**
: Defendants. : **NOVEMBER 21, 2003 ORDER AS A**
: : **FINAL APPEALABLE ORDER**
: : **PURSUANT TO CIV. R. 54(B)**

Now comes Plaintiff, Mountain Top Beverage Group, Inc., by and through counsel, and respectfully requests that the Court certify its November 21, 2003 order as a final order pursuant to Federal Rule of Civil Procedure 54(b) so that an appeal may be taken pursuant to Plaintiff's December 15, 2003 Notice of Appeal. A brief memorandum in support is attached hereto.

Respectfully submitted,

CHERNESKY, HEYMAN & KRESS P.L.L.

/s/ Thomas P. Whelley II

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MEMORANDUM IN SUPPORT

On November 21, 2003, this Court issued an Order granting the motions for summary judgment of Defendants Wildlife Brewing N.B., Inc. and Pittsburgh Brewing Company. The order disposed of only some of the claims involved in this case, as Defendant Wildlife Brewing N.B., Inc.'s claims against Plaintiff Mountain Top Beverage Group, Inc. and Third-Party Defendant B.L.S. of Sarasota are still pending. Plaintiff filed a Notice of Appeal from the Court's decision. However, the Court did not certify its Order as a final order pursuant to Federal Rule of Civil Procedure 54(b). Plaintiff Mountain Top Beverage Group, Inc. requests that the Court do so at this time to remove any barriers to Plaintiff's appeal of the Court's Order.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing has been served upon the following by electronic transmission on this 5th day of January, 2004:

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